

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

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v.

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CRIMINAL No.: JKB-22-cr-439

DAVANTE HARRISON

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Defendant

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**MOTION TO DISMISS THE INDICTMENT FOR A VIOLATION OF THE
PRESENTMENT CLAUSE OF THE FIFTH AMENDMENT**

COMES NOW the Defendant, Davante Harrison, by undersigned counsel, William B. Purpura, and hereby respectfully moves this Honorable Court to Dismiss the Indictment, charging the defendant with Racketeering Conspiracy. As more fully set forth below, the basis for this motion is that the Government intentionally or through gross negligence manipulated/truncated critical text messages attributable to the defendant, which completely changed the meaning of the message (see Overt Act 22). Wrongfully attributed co-defendant Warren as the sender and author of an inflammatory text message to Harrison, depicting himself brandishing an assault rifle (see Over Act 20). And intentionally disregarded text messages that gave accurate context to the meaning of the communications and the relationship between co-defendant Warren and Harrison. As well as other misrepresentations as described below to obtain an Indictment.¹ Where the prosecutor introduces inaccurate testimony, the Indictment is subject to dismissal if the effect of the errors “substantially influenced the grand jury’s decision to indict,” or if “there is grave doubt that the decision to indict was free from the substantial influence” of such error. Bank of Nova Scotia, 487 U. S. 250, 256 (1988).

¹ On October 31, 2023, counsel notified government counsel that this motion would be filed and

FACTUAL BACKGROUND

The government's theory of Harrison's criminal responsibility in the RICO (Enterprise) is twofold: First, supplying cocaine and heroin to BGF drug shops. Between 2014 and 2016, Harrison "partnered with a BGF member to supply heroin and cocaine to street-level drug 'shops' in Baltimore City" (Overt Act 1). Second, between 2014 and 2018, Harrison contracted with BGF members to murder various individuals. The primary alleged "hitman" is the lead defendant in the Indictment, David Warren. This individual, whether based on fact or fiction, was regarded in the community and by law-enforcement as a violent offender (Ex. 1 Indictment, filed Dec. 15, 2022, ECF 1)

I. MISREPRESENTATIONS BY THE GOVERNMENT

A. Intentional misrepresentation by the government by altering a text message

Overt Act 22: "On or about March 17, 2018, WARREN told HARRISON via Instagram that he was willing to commit additional acts of violence in order to become a member of HARRISON's inner circle. WARREN wrote "*More then [sic] willing to put it in for my spot...[t]he route I'm going Ima [sic] be in the can or gone[.]* (emphasis added)" HARRISON responded, "Alreadyyyy we going get up."

The complete uncensored Instagram message from Warren to Harrison, Instagram Business Record, page 926 (Ex.2):

"More then willing to put in for my spot the route I'm going Ima be in the can or gone [,]
I CAN DO THAT RAP SHIT NO EFFORT" (Emphasis on missing quote added).

In addition to the material misrepresentation of the actual text message, the government's representation as to the meaning of the text is also materially misrepresented. The preceding text

the general content of the motion.

messages via Instagram, from March 13-18, 2018, between Warren and Harrison, clearly demonstrate that Warren was reaching out to Harrison for his advice/help with rap music and NOT that he “was willing to commit additional acts of violence in order to become a member of Harrison’s inner circle.”

3/13/18, 12:44 pm, Warren to Harrison: Motivation 100 (reel share of Warren’s lyrics attached)

3/15/18, 4:06 pm, Warren to Harrison: Check my video out let me know if I’m on to something

3/16/18, 2:16:04 pm, Harrison to Warren: I been saw it, I Prolly was the first one to see it

3/16/18, 2:16:58 pm, Harrison to Warren: Keep talking that pistol play that shit going go just off
username alone

3/16/18, 2:40 pm, Warren to Harrison: Already I got a vision Ima keep coming wit it 100

3/16/18, 2:46 pm, Harrison to Warren: 100

3/16/18, 4:13 pm, Warren to Harrison: Ygg will look good round my neck stand up nigga loyalty
come first

3/17/18, 7:44 pm, Harrison to Warren: Straight like that!!

3/17/18, 7:47 pm, Warren to Harrison:  100

**3/17/18, 7:51 pm, Warren to Harrison: More then willing to put in for my spot the route
I’m going Ima be in the can or gone I can do that rap shit no effort**

3/17/18, 9:01 pm, Harrison to Warren: Alreadyyyyy We going get up

Attached as Exhibit 3 is a spreadsheet of all Instagram communications between Harrison and Warren provided in discovery. There is no justification for the government to truncate/edit the text message contained in Overt Act 22 or to misrepresent to the grand jury that this message suggested that Harrison “was willing to commit additional acts of violence in order to become a member of HARRISON’s inner circle.” It is evident from the preceding text messages and those after March 17, 2018, that the clear meaning of the communications concerned rap music.

Messages after March 17, 2018:

7/13/18, 3:45 pm, Warren to Harrison: Littup (reel share attachment, music)

7/13/18, 3:49:02 pm, Harrison to Warren: My nigga 🖐️
7/13/18, 3:49:27 pm, Warren to Harrison: Let's hit the booth streets need this one²
7/13/18, 3:49:40 pm, Harrison to Warren: We can
7/13/18, 3:49:43 pm, Harrison to Warren: End of the month
7/13/18, 3:49:51pm, Harrison to Warren: When I start back working
7/13/18, 3:49:58 pm, Warren to Harrison: Let me know
7/17/18, 5:45 pm, Warren to Harrison: That shit motivate me keep dragging pimp (reel share attached with Harrison's music)
7/17/18, 7:17 pm, Harrison to Warren: Alreadyyyyyy stupid 🖐️
8/7/18, 10:10 am, Warren to Harrison: Im waiting on the booth cuz

The August 7, 2018, Instagram text from Warren to Harrison stating he was waiting for Harrison to get the recording studio “the booth” was the last Instagram communication between Warren and Harrison.

During the same time that Warren was reaching out to Harrison for help in getting his rap music career off the ground, he was also reaching out to another young successful rap music artist in Baltimore, Dajuan Cannady, who goes by YBS_Skola (Young Ballers Shining). These communications were supplied by the government in discovery. The government either intentionally or through gross negligence failed to disclose these communications to the grand jury. The communications between Warren and Cannady are eerily like those between Warren and Harrison (Ex. 4):

4/11/18, 8:20 pm, Warren to Cannady: 🖐️ (forwards Reel Share)

4/12/18, 1:22 am, Cannady to Warren: 🖐️ 🖐️

4/12/18, 1:11 pm, Warren to Cannady: I'm willing to put in that W these circles I'm in Ima end right back in the can nigga need a way out pimp 🖐️ and I'm a loyal nigga wit a army that LISTENS behind me

² Rap Dictionary: An A to Z guide to Rap/Hip Hop, <https://rapdictionary.com> Booth: “A recording enclosure in a recording studio. The Yo Example sentence: ‘Go in the booth and lay

One minute after that text, Harrison follows-up:

4/12/18, 4:12 pm, Warren to Cannady: No bullshit how was that video it was my first one

4/12/18, 4:21pm, Cannady to Warren: Keep going fam, you gah story that streets going to relate to

Within two minutes on April 17, 2019, Warren sends almost the identical message to both Harrison and Cannaday:

4/17/18, 11:41:19 am: **Warren to Harrison:** Shit getting wicked for on my side of town gotta be something for me need a way out RS (real shit)

4/17/18, 11:43:36 am: **Warren to Cannady:** Shit getting wicked for me the route I'm hidden now not going be cool at the end keep me in mind nigga need a way out

This seemingly blatant misrepresentation by the government to the grand jury calls into question other information presented to the grand jury surrounding the Warren/Harrison relationship.

B. Misrepresentation of the Warren/Harrison relationship

Overt Act 14 alleges that Harrison solicited Warren's services as a hitman between February and August of 2018.

1. J.A. who burglarized Harrison's house in 2013 (Overt Act 15,16). Warren and unindicted co-conspirator attempted to murder J.A. on **February 23, 2018**.

2. Rival gang member R. Be attempted murder **April 4, 2018**. Warren allegedly murdered the target's mother and sister when the target could not be located.

3. Rival gang member R. Br. attempted murder **August 7, 2018**. Warren allegedly murdered a construction worker and attempted to murder his co-worker when the target could not be located.

something down'." Booth in songs: "Soon I step out the booth, the camera pops." Jay-Z

The government had in its possession Instagram text messages between Warren and Harrison which clearly illustrate that Warren was unsuccessful in trying to connect with Harrison during this time. As of July 5, 2018, Warren was still trying to “link up” with Harrison. Subsequent texts suggest that despite Warren’s attempts, there was no meeting between Warren/Harrison through August 7, 2018, “waiting on the booth,” which was the last text communication between Warren and Harrison. The Warren/Harrison communications are completely contradictory to the information presented to the grand jury in Overt Act 14.

3/17/18, 9:05 pm Warren to Harrison: 4434538277³

3/27/18, 11:34 am, Warren to Harrison: My pride to the side I’m tryna get up with me pimp

4/2/18, 8:40 pm, Warren to Harrison: Use my # bro whateva you going love me in a week

4/11/18, 8:04 pm, Warren to Harrison: Gave you my # its worth using RS

6/11/18, 10:02 pm, Warren to Harrison: Link up bro good nigga take time to ask about me

7/5/18, 5:41 pm, Warren to Harrison: Link up I’m the one 4real.

7/13/18, 3:49:27 pm, Warren to Harrison: Let’s hit the booth streets need this one

7/13/18, 3:49: 40 pm, Harrison to Warren: We can

8/7/18, 10:10 am, Warren to Harrison: Im waiting on the booth cuz

C. Misrepresentation of Harrison signing Warren as a “contract killer”

Over Act 17: The government represented to the Grand Jury its conclusion that Harrison’s video, “The Shooter,” which was posted on Instagram February 24, 2018, corroborated that he signed Warren as his hitman. The government had in its possession the above captioned text messages between Warren and Harrison which clearly demonstrate that as of July 5, 2018, Warren was still waiting for Harrison to “link up” with him. Again, the

³ Warren sent Harrison his cell number which based on phone records was never used by Harrison.

government showed a reckless disregard of the evidence and ultimately misled the grand jury.

D. Misrepresentation that Warren sent Harrison a photograph that depicted Warren brandishing an assault rifle

Overt Act 20: The government either intentionally or through gross negligence incorrectly represented to the grand jury that on March 14, 2018 “WARREN sent HARRISON a photograph that depicted Warren brandishing an assault rifle,” and misrepresented the author and sender of the text message to which the photograph was attached that contained rap music lyrics that are explicit and inflammatory. “I’m a young bitch with a lotta power don’t make me shut down your hood.” The government further erroneously represented to the grand jury that Warren then instructed Harrison to delete the message. “Delete this after you see it.”

From a review of the discovery produced to date, the evidence contained therein tells a very different story. In sum, the photograph in question was **created by Keyshay**⁴ (LNU) during a FaceTime call with Warren on February 8, 2018. Subsequently on March 14, 2018, it was **Keyshay**, not Warren, who texted to Harrison the photograph and added the rap music lyrics, and it was **Keyshay** who stated, “delete this after you see it.”

The events occurred as follows:

Specifically, on **February 8, 2018**, at 6:01:52 p.m. EST, David Warren initiated a video call with Keyshay (LNU) using FaceTime. Warren initiated the call from his primary phone number 443-453-8277. The receiving phone number was 410-793-9164, a number associated with a woman named Keyshay as stored in Warren’s phone contacts. The FaceTime call duration was 2 minutes, 43 seconds. The call was terminated at 6:04:35 p.m. EST (Ex. 5, Cellebrite, Extraction Report). During the FaceTime call, at 6:02:15 p.m. EST, Keyshay took a screenshot

⁴ From the downloads of Harrison’s and Warren’s respective phones, Keyshay is a woman who

(.jpg format) of her and Warren speaking. The screenshot captured two images. The larger image is of Warren “brandishing an assault rifle” while laughing; the smaller image in the upper right-hand corner is Keyshay, also laughing, while lying on a pillow (Ex. 6: screenshot and Metadata reflecting date/time of screenshot).

On **March 14, 2018**, at 5:13 p.m. EST (Overt Act 20), a text message was sent to Harrison’s phone (443-699-8109) by the phone number previously identified as a phone number associated with Keyshay (410-793-9164). The message contained in part the above-referenced screenshot of Warren with a rifle and select lyrics from one of Harrison’s songs (Ex. 7).

Clearly, prior to the presentment to the grand jury, the government knew or should have known that it was Keyshay who captured the image of Warren with the assault rifle on February 8, 2018. That it was Keyshay and not Warren who forwarded the photo to Harrison on March 14, 2018, and it was Keyshay and not Warren who added the inflammatory rap music lyrics to the text message.

In discovery provided by the government from November 2, 2017, through April 18, 2018, there are 351 pages of text messages between Keyshay and Harrison containing approximately 1,053 text messages. Their messages and shared photographs/videos concerned attempts to get together as a couple and sharing their interest in rap music (Ex. 8 text messages between Keyshay and Harrison during March 2018.)

These misrepresentations call into question other conclusions presented to the grand jury. Specifically in Overt Act 25 and 32, the government concluded that on April 4, 2018, and August 7, 2018, Warren’s text messages stating he was “waiting on a bag” referred to money owed by Harrison for murder.

appears to have engaged in a relationship with both men.

II. The Law

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury...

U.S. Const. amend. V.

The dual roles of the Grand Jury are deeply rooted in our system of justice:

The Founders thought the grand jury so essential to basic liberties that they provided in the Fifth Amendment that federal prosecution for serious crimes can only be instituted by ‘a presentment or indictment of a Grand Jury.’ The grand jury’s historic functions survive to this day. Its responsibilities continue to include both the determination whether there is probable cause to believe a crime has been committed and the protection of citizens against unfounded criminal prosecutions.

United States v. Calandra, 414 U.S. 338, 343 (1974). The grand jury clause of the Fifth Amendment confers the substantial right on defendants that they shall not be tried except on presentment of an indictment. The defendant may be tried only on the charges named in the indictment that the grand jury has approved. Stirone v. United States, 361 U.S. 212, 215-16 (1960) (Deprivation of “the right to be tried only on charges presented in an indictment and returned by a grand jury...is far too serious to be treated...as harmless error.”) The defendant is deprived of his right to have all charges screened by the grand jury “if the deviation in proof...from the specifics of the indictment affects an essential element of the offense charged.” United States v. Lemire, 720 F.2d 1327, 1345 (D.C. Cir. 1983).

Standard for Dismissal

Dismissal of an indictment is appropriate where the court finds that an error before the Grand Jury “substantially influenced the grand jury’s decision to indict, or [that] there is ‘grave doubt’ that the decision to indict was free from the substantial influence of such violations.” Bank of Nova Scotia, 487 U.S. 250, 256 (1988) (quoting United States v. Mechanik, 475 U.S. 66,

78 (1986). “The prejudicial inquiry must focus on whether any violations had an effect on the grand jury’s decision to indict.” *Bank of Nova Scotia*, 487 U.S. at 263; *United States v. Naegele*, 474 F. Supp. 2d 9, 12-13(D.C. 2007). Here the government at the very minimum in Overt Act 22 deleted a portion of a text message to infer criminal intent. To compound the egregious misrepresentation, knowing the innocent intent of the message the government opined that the message suggested that Warren was willing “to commit additional acts of violence” on behalf of Harrison. In Overt Act 20 the government misled the grand jury by erroneously stating that Warren was the sender of the incriminating photograph and text message. Contrary to the allegations of error in *United States v. Williams*, 504 US 36 (SC 1992) this is not a claim of failure to present to the grand jury exculpatory evidence. Here the government’s hand is “caught in the cookie jar” and there is “grave doubt” (*Bank of Nova Scotia supra*-256) that the decision to indict was free of this wrongful influence.

Wherefore, it is respectfully requested that the above-captioned Indictment be dismissed as to defendant Harrison. In the alternative, that Notice of Enhanced Sentencing paragraphs 6 and 7 be dismissed due to underlying errors and misrepresentations intentionally or through gross negligence presented to the grand jury and its direct relationship to these paragraphs and the sentencing enhancement. Further, that the Court order government counsel to release to undersigned counsel the questioned portions of the grand jury testimony. That the specific grand jury testimony is necessary to determine the scope of all misrepresentations.

Respectfully submitted,

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